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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**01/08/2021**  
Clerk of the Court  
BY: KALENE APOLONIO  
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

ANTHONY THORP,

Plaintiff,

vs.

TENDERLOIN HOUSING CLINIC, INC.; 439  
O'FARRELL STREET, LLC; and DOES 1 through  
20, inclusive,

Defendants.

Case No.

COMPLAINT

**CGC-21-588769**

1. Violation of San Francisco Administrative Code § 37.10 B
2. Violation of the Unruh Civil Rights Act California Civil Code § 51 et seq.
3. Breach of the Implied Warranty of Habitability
4. Breach of the Statutory Warranty of Habitability
5. Nuisance
6. Breach of the Covenant of Quiet Enjoyment
7. Negligence/Personal Injury
8. Negligent Violation of Statutory Duty
9. Intentional Infliction of Emotional Distress
10. Breach of Contract
11. Premises Liability
12. Unlawful Business Practices
13. Violation of Cal. Gov. Code §12927(c)(1)

JURY TRIAL DEMANDED

COMES NOW ANTHONY THORP ("Plaintiff"), who alleges as follows:

**PARTIES**

1. Plaintiff ANTHONY THORP is a residential tenant at 445 O'Farrell Street, Unit 408, San Francisco, California, 94102 (the "Premises"). The Premises is located within 445 O'Farrell Street, San Francisco, CA 94102, a hundred unit building that is run as a residence hotel called the "Winton Hotel" and referred to herein as the "Property" or the "Winton." Plaintiff shares bathrooms and a common lobby/lounge and kitchen area with the other tenants of the Property but has a private room. Mr. Thorp has been a tenant at the Premises since approximately January 2010. Mr. Thorp believes he signed a written monthly rental agreement with a prior owner/ manager of the Property when he first became a tenant at the Property, but has no copy of any initiating tenancy document in his custody at present.

2. Plaintiff, who leases a residential unit at the Property, is a tenant within the definition of the San Francisco Residential Rent Ordinance.

3. Plaintiff qualifies as a "person who hires a dwelling" (i.e. tenant) as defined by California Civil Code Section 1940 and avails himself of all the rights, remedies and benefits contained therein.

4. By way of Plaintiff's long-term tenancy and regular monthly payment of rent, Plaintiff is also a common law tenant of the Property.

5. Plaintiff still resides in the Premises as a tenant pursuant to a monthly rental agreement with Defendants' predecessors in interest. Plaintiff's rent is \$650 per month.

6. Plaintiff is informed and believe, and thereupon allege, that Defendant 439 O'FARRELL STREET, LLC ("439 O'Farrell" or "Defendant Owner") is a California limited liability company headquartered at 402 8th Ave, Ste 207, San Francisco, CA 94118. 439 O'Farrell owns the Property and has owned the Property from March 2017 until present day (the "Relevant Period").

7. Plaintiff is informed and believes, and thereupon alleges, that Defendant TENDERLOIN HOUSING CLINIC, INC. ("THC" or "Defendant Manager") is a California Corporation authorized to operate in the state of California and at all times relevant herein doing business in and headquartered at San Francisco, California. According to its website, THC manages 23 residence hotels in San Francisco and offers "safe, supportive housing." THC provides "rental assistance and supportive services for

1 homeless individuals who have long-term disabilities resulting mainly from serious mental illness,  
2 alcohol and drug use, or an HIV positive medical condition.” THC’s website also states, “In partnership  
3 with the Human Services Agency, THC provides case management and supportive services to help  
4 participants maintain stability in permanent housing.”

5 8. On information and belief, Plaintiff alleges that THC leased the Winton from Defendant Owner  
6 or Defendant Owner’s predecessor in interest, (which were related entities) on or about December 2016  
7 and shortly thereafter, assumed the responsibility for collecting Plaintiff’s rent on behalf of Defendant  
8 Owner, keeping the Property and Premises maintained in a safe and habitable condition and fulfilling  
9 Defendant Owner’s duty to provide Plaintiff with the quiet enjoyment of the Premises and Property.  
10 THC acted as property manager for the Property from approximately December 2016 through the present  
11 day, and as such, were agents of the owners of the Property and were therefore “landlords” of Premises  
12 as defined by Section 37.2(h) of the San Francisco Administrative Code.

13 9. The true names and capacities of Defendants sued herein as DOES 1 through 20, inclusive,  
14 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such  
15 Defendants by such fictitious names. When their true names and capacities are ascertained, Plaintiff will  
16 amend this Complaint by asserting their true names and capacities herein. Plaintiff is informed and  
17 believes, and thereon alleges, that each of the fictitiously named Defendants is responsible in some  
18 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were  
19 proximately caused by those Defendants.

20 10. Plaintiff is informed and believes, and thereon alleges, that in doing the things herein alleged, the  
21 Defendants, and each of them, including without limitation the DOE Defendants, were acting as the  
22 agents, employees and/or principals of their co-defendants, and were generally acting within the course  
23 and scope of their agency and employment.

24 11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, each  
25 employer of employees had advanced knowledge of the unfitness of the employee and employed them  
26 with conscious disregard of the rights or safety of Plaintiff and others and authorized and/or ratified the  
wrongful conduct and/or was personally guilty of oppression, fraud, or malice.

**FACTUAL ALLEGATIONS**

12. Plaintiff is a disabled Native American. He has impaired function of one arm and hand, severe osteoarthritis in his knees, hips and shoulders and has been diagnosed with insomnia. He is in need of reasonable accommodations, including quiet surroundings, bathrooms maintained in sanitary conditions, a secure building, free of abusive neighbors, especially at night, exemption from THC's harassing "wellness checks," and functioning elevator services.

13. Plaintiff is informed and believes that all Defendants knew or should have known that they have a duty to maintain the Property in a legally habitable condition and failing that duty would cause the property to be rented in a condition beneath the habitability level required by law and would result in the damages that are the subject of this complaint.

14. During the Relevant Period, Plaintiff repeatedly notified THC both verbally and in writing of habitability and livability defects at the Premises and Property, including but not limited to: extremely dangerous and threatening conduct by THC clients that endanger the health and safety of Plaintiff and other Winton residents, rodent infestations, cockroach infestations, animal waste in the halls and bathrooms, lack of sufficient janitorial services, damaged bathroom doors and fixtures, inadequate electrical power, inadequate smoke alarms, water intrusion, defective heating, blocked emergency egress, defective plumbing, leaks into the lobby, chipped and peeling paint, overflowing garbage bins, recurring lack of elevator service for days or weeks at a time that severely impacts physically handicapped residents, and the utter lack of supervision of the high risk "clients" the THC houses at the Winton, resulting in theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, fires, non-residents gaining access to the Property at night because THC employees prop the door open, and tenants left deceased in their rooms for days at a time.

15. During the Relevant Period, all Defendants were aware that they were and are unable to provide safe, habitable housing to Plaintiff that fulfilled Defendants' duty to Plaintiff to maintain the warranty of habitability, covenant of quiet enjoyment and a landlord's duty to act with ordinary care or skill in the management of its property.

1 16. THC has abdicated its duty to supervise its clients, enforce building rules, including its policy on  
2 visitors, security, quiet hours and assure that problem tenants do not disturb Plaintiff and the other  
3 building residents. THC's demonstrable incompetence as a property manager has created nuisances and  
4 destroyed Plaintiff's quiet enjoyment of the Premises.

5 17. Plaintiff has a THC client living in the room directly below him (Unit 308) that screams, pounds  
6 the walls and throws furniture constantly, at all hours. This THC client eventually came to live in a bare  
7 room, with no furniture but for a mattress because he has destroyed all his furniture. The tenant in 308  
8 still screams and pounds the walls day and night, making it exceedingly difficult for Plaintiff to sleep.  
9 Plaintiff complained to THC about this problem and asked that he be moved as a reasonable  
10 accommodation to his disability but Defendants have not cured the excessive noise nuisance.

11 18. Plaintiff has had numerous encounters with violent and aggressive THC clients. As a person with  
12 a damaged arm and severe arthritis, Plaintiff lives in constant fear that he could be attacked by THC  
13 clients who are violent and intoxicated. Plaintiff complained to THC about this problem since May 2020  
14 and asked that the violent bully in room 417 be moved as a reasonable accommodation to his disability  
15 but Defendants have ignored his request.

16 19. All Defendants were at all times aware that they, acting as managers and operators at the  
17 property, had failed to maintain it to the standard of habitability as required by law and breached the  
18 covenant of quiet enjoyment to Plaintiff. In addition to the foregoing substandard and defective  
19 conditions, including rodent infestations, the Property lacked other necessary characteristics to be a  
20 habitable dwelling.

21 20. Despite Plaintiff's continued requests, the defective conditions remain unabated.

22 21. Plaintiff did not cause or contribute to the substandard conditions described herein and had fulfilled  
23 his obligations as a tenant at all times.

24 22. At all times relevant to this action, Defendants were aware that the Property was defective in that  
25 it suffered from numerous habitability defects, including but not limited to: extremely dangerous and  
26 threatening conduct by THC clients that endanger the health and safety of Plaintiff and other Winton  
residents, rodent infestations, cockroach infestations, animal waste in the halls and bathrooms, lack of

1 sufficient janitorial services, damaged bathroom doors and fixtures, inadequate electrical power,  
2 inadequate smoke alarms, water intrusion, defective heating, blocked emergency egress, defective  
3 plumbing, leaks into the lobby, chipped and peeling paint, overflowing garbage bins, improper handling  
4 of the mail, lack of elevator service that severely impacts handicapped residents, and the utter lack of  
5 supervision of the high risk “clients” the THC houses at the Winton, resulting in theft, prostitution, drug  
6 dealing, assaults and batteries, trafficking in stolen bicycles, bomb threats, fires, non-residents gaining  
7 access to the Property at night because THC employees prop the door open, and tenants left deceased in  
8 their rooms for days at a time.

9 23. In approximately fall of 2015 through November 2016, the Winton owners in conjunction with  
10 Tipton Management Company, Inc., made a series of repairs to the building. Although the repairs were  
11 done very cheaply using low quality materials, by 2016 the Property had been painted, a new fire  
12 suppression system had been installed, many leaks were repaired, the elevator had been repaired, the  
13 putrid carpeting had been replaced with cheap vinyl floor tiles, and the bathrooms had been redone. The  
14 bedbugs, roaches and rodents had been suppressed to the point where longstanding violations from the  
15 San Francisco Health Department and the Building Department were removed.

16 24. When THC assumed management of the Property, the building had been cleared of tenants except  
17 for approximately 15 rooms, which were occupied by long term, rent-controlled tenants, of whom  
18 Plaintiff was one.

19 25. Plaintiff estimates that from January 2017 to present, Defendant THC has had 25 different  
20 building managers. THC inability to employ competent managers and staff is the main reason that the  
21 Property is unsafe and uninhabitable. THC staff routinely ignore their duties and allow breaches of  
22 building security, resulting in prostitution, drug dealing and scooter and bike “chop shops” occurring at  
23 the Property. THC does not sufficiently monitor the activity of its clients to insure that they act in a  
24 manner consistent with resident hotel communal living. THC does not maintain building, and especially  
25 bathroom and garbage area sanitation. The way THC manages the Property is a disgrace.

26 26. There are many agencies in San Francisco that manage residence hotels that house the formerly  
homeless with mental health and substance abuse issues that do not have this chronic and systematic lack

1 of supervision. To be clear, the state of the Winton complained of herein is not primarily due to the fact  
2 that the THC houses the formerly homeless, it is due to THC's incompetence and lack of supervision of  
3 its clients at the Property.

4 27. Plaintiff complained in writing that the THC client in Room 426, after his smoke alarm was  
5 beeping for 45 minutes. The THC client was pungent with feces, urine and vomit, wearing putrid  
6 clothing. Plaintiff has encountered this THC client multiple times and the stench coming from his body  
7 is nauseating. He has been passed out intoxicated in the 4<sup>th</sup> floor hallway on several occasions covered in  
8 excrement. It is clear that THC is merely warehousing this "client" but doing little else to help him.

9 28. THC receives government funding to house and support its "clients" at the Winton. As an unfair  
10 business practice, THC does not provide the services it purports to provide to its at risk clients, while  
11 being paid to do so. THC does not manage the Property in a way that remotely fulfills the warranty of  
12 habitability or covenant of quiet enjoyment and maintains nuisance tenants and conditions at the  
13 Property. Defendants operate the Winton far below a landlord's duty to act with ordinary care or skill in  
14 the management of its property.

15 29. Once THC took over managing, things went quickly awry. There was a manager who supervised  
16 the building reasonably well at the outset, while THC was gradually populating the near-empty Property.  
17 After a few months, that manager left, the vacant rooms at the Property were filled with THC clients, and  
18 a revolving cast of building managers and staff began.

19 30. All Defendants were at all times fully aware that they, acting as managers and operators at the  
20 property, had failed to maintain it to the standard of habitability as required by law.

21 31. Plaintiff did not cause or contribute to the substandard conditions described herein and had fulfilled  
22 his obligation a tenant.

23 32. At all relevant times herein, numerous defective living conditions have existed, and continue to  
24 exist throughout Plaintiff's tenancy. These defective conditions include, but are not limited to:

- 25 a. Poor maintenance of the Property resulting in rodent harborage;
- 26 b. Entry of rodents into the Property;
- c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;

- d. Inadequate performance of necessary maintenance and/or rehabilitation;
- e. Extreme excessive noise such as THC clients beating on walls and doors or playing loud music late at night.
- f. Inadequate protection from certain THC clients' dangerous behavior;
- g. Inadequate protection from fire hazards, including but not limited to nonfunctioning fire alarms and lack of emergency egress;
- h. Lack of smoke and carbon monoxide detectors;
- i. Defective and inadequate plumbing;
- j. Cracked and peeling exterior and interior paint;
- k. Water intrusion;
- l. Biological contamination;
- m. Defective windows and doors;
- n. Cockroach infestations;
- o. Bedbug infestations;
- p. Non-functioning elevator/lack of elevator service;
- q. Inadequate flooring;
- r. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- s. Complete failure to enforce Covid health and safety regulations amongst THC's clients, such as wearing masks in the common areas;
- t. Failure to supervise THC clients and enforce building rules, resulting in Plaintiff's exposure to dangerous situations such as theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, arson fires, non-residents gaining access to the Property at night because THC employees *prop the door open for them*, and tenants left deceased in their rooms for days at a time.

33. Each Defendant had actual and constructive knowledge of these conditions at the respective Premises and the Property and failed to cure the conditions listed herein.



1 34. Throughout the Relevant Period, Plaintiff repeatedly notified all Defendants and/or their agents,  
2 of the defective and dangerous conditions listed above, among others, and requested that all Defendants  
3 have them repaired. Despite these requests, all Defendants, and each of them, failed and/or refused to  
4 repair the conditions, and/or have done so in a negligent and/or unreasonable fashion and in bad faith.

5 35. All Defendants exhibited wanton and blatant disregard of these unsanitary and uninhabitable  
6 conditions, as most were manifestly visible to the untrained observer.

7 36. In November 2020, Defendants restricted Plaintiff's use of the kitchen without a corresponding  
8 reduction in rent.

9 37. As a result of THC clients' corpses remaining undiscovered in their rooms for several days,  
10 THC renewed its efforts to perform "wellness checks." THC would send staff to pound on the doors of  
11 the tenants, usually in the morning. However, Plaintiff is not a THC client but merely a long-term,  
12 rent-controlled tenant of the Winton who never had to respond to "wellness checks" before. Also,  
13 because of the excessive noise at night, Plaintiff has suffered from irregular sleep patterns, and is often  
14 sleeping in the morning because it is finally quiet enough to sleep. THC staff uses "wellness checks"  
15 as an opportunity to harass Plaintiff. THC would make a joke of disturbing Plaintiff with daily, often  
16 early morning "wellness checks." THC staff would pound loudly on his door until he answered, or  
17 sometimes pound loudly on his door and run away laughing, without waiting for Plaintiff to respond.  
18 Plaintiff offered to check in daily at the front desk and pointed out that he was not a THC client and  
19 should not be subject to their oversight in this manner. Plaintiff requested both verbally and in writing  
20 that the wellness checks stop, and requested this as a reasonable accommodation to his disability and  
21 the excessively noisy conditions at all hours of the night. THC has ignored his requests for reasonable  
22 accommodation.

23 38. THC has access to a video surveillance system in the halls and other common areas. Plaintiff  
24 has made many complaints to Defendants such as: his THC client-neighbor is screaming and beating  
25 on his walls, or a THC client is setting a fire in the hall, or a THC client is pulling the fire alarm  
26 without cause, or a THC client is passed out on drugs in the hall, or THC clients are going on the fire  
escape or roof and using drugs, or a THC client is throwing heavy objects out of a window to the street

below. These acts can be observed and verified on the surveillance system but THC is loathe to take any steps to correct this behavior or insure Plaintiff's safety.

39. . Plaintiff believes that THC's inaction is part of an attempt to unlawfully clear the building of non-THC clients by pressuring them with intolerable living conditions. Defendants' conduct is an attempt to force Plaintiff, who is a daily witness to THC's mismanagement of the Property and its clients, to vacate his unit. If Plaintiff vacated, THC would be able to place another client in his room and siphon off even more government funds without providing the necessary services to its clients.

40. All Defendants did not perform their obligations under the rental agreement in ways that include, but are not limited to the following:

- a. Poor maintenance of the Property resulting in rodent harborage;
- b. Entry of rodents into the Property;
- c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;
- d. Inadequate performance of necessary maintenance and/or rehabilitation, including but not limited to a failure to repair the bathrooms;
- e. Inadequate electrical amperage;
- f. Inadequate protection from THC clients' dangerous behavior;
- g. Inadequate protection from fire hazards, including but not limited to allowing THC client to possess dangerous gasoline and other flammable solvents in their rooms;
- h. Lack of smoke and carbon monoxide detectors;
- i. Defective and inadequate plumbing;
- j. Cracked and peeling exterior and interior paint;
- k. Water intrusion;
- l. Biological contamination;
- m. Defective windows and doors;
- n. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- o. Syringes from iv drug use in the bathrooms and halls
- p. Inadequate temperature control of the steam heat.

41. As a direct and proximate result of the above acts by all Defendants, and each of them, Plaintiff paid excessive rent for the Premises during the Relevant Period.

42. As a direct and proximate result of the above mentioned conduct, Plaintiff has suffered and continues to suffer damages, all in an amount to be proven.

43. As a direct and proximate result of the above conduct, Plaintiff has suffered and continues to suffer reduced use of each Premises at the Property, attorney fees, and other special damages.

44. All Defendants engaged in the above-described conduct with the knowledge that the conduct was without right or justification and without regard for the fact that it would cause injury to Plaintiff, notwithstanding their obligation to comply with applicable ordinances and statutes providing for quiet possession and enjoyment of each Premises at the Property. Plaintiff is therefore entitled to punitive damages.

45. Plaintiff is informed and believes and thereon alleges that the actions of all Defendants as described above were done with oppression, fraud, and malice as defined in Civil Code § 3294. As such, Plaintiff should recover, in addition to actual damages, damages to make an example of and to punish Defendants.

#### **FIRST CAUSE OF ACTION**

##### **(Violation of San Francisco Administrative Code Chapter 37.10 B against all Defendants)**

46. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

47. The acts described above constitute unlawful harassment under the San Francisco Administrative Code section 37 et seq. (the "Rent Ordinance") as Defendants, in bad faith, refused to perform their duties and obligations. Defendants' bad faith conduct includes, but is not limited to, Defendants' failure to perform repairs in a timely and competent manner as described above, violate Rent Ordinance section 37.10B (a)(1)-(3), (10), (13) and (15). Defendant's violation included, but is not limited to, violation of 37.10B (a) (1), by acts that interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws; violation of 37.10B (a) (2) by acts of failure to perform repairs in a timely and competent manner; violations of Rent Ordinance section 37.10B (a) (3) by acts of failure to undertake repairs with due diligence and exercise proper water intrusion remediation

1 protocols, as described above; by violation of Rent Ordinance section 37.10B (a) (10) by acts that  
2 interfere with Plaintiffs' right to quiet use and enjoyment of a rental housing unit as that right is defined  
3 by California law; by violation of Rent Ordinance section 37.10B (a) (13) by acts that interfere with  
4 Plaintiffs' right to privacy; by violation of Rent Ordinance section 37.10B (a) (14)&(15) by engaging in  
5 other repeated acts or omissions of such significance as to substantially interfere with or disturb the  
6 comfort, repose, peace or quiet of Plaintiff who is lawfully entitled to occupancy of the Premises and that  
7 caused, and were likely to cause, and/or were intended or are intended to cause any person lawfully  
8 entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights  
9 in relation to such occupancy.

10 48. Plaintiff notified Defendants of habitability and livability defects at the Property. Defendants  
11 refused to effectuate any necessary repairs to the Premises or Property. Defendants' failure to repair the  
12 outstanding habitability defects reported by Plaintiff were acts in bad faith, whereby the Defendants  
13 knew of their contractual and legal obligation to provide safe, habitable housing and refused or failed to  
14 do so. Such acts of Defendants, including but not limited to, their failure to address peeling paint, rodent  
15 infestation, water intrusion and plumbing leaks, defective heating, were likely to cause or intended to  
16 interfere with Plaintiff's quiet enjoyment of their respective rental units. Defendants' bad faith actions  
17 included the failure to undertake repairs with due diligence and exercise proper remediation protocols,  
18 and was an interruption of housing services required under law, including Civil Code Section 1941, et  
19 seq., and Health & Safety Code sections 17920.3, 17975, et seq. Defendants also knew about their  
20 obligation to comply with the San Francisco Rent Ordinance, including Rent Ordinance  
21 §§37.10B(a)(2),(3),(10), and (14) but failed to do so.

22 49. As a direct, proximate, and foreseeable result of Defendants' actions, Plaintiff has suffered  
23 general and special damages in an amount to be determined at trial, but in no event less than the  
24 jurisdictional limits of this Court, and trebled pursuant to San Francisco Administrative Code section  
25 37.10B(c)(5).

26 50. As a direct, proximate, and foreseeable result of Defendants' illegal actions done with  
oppression, fraud and malice, Plaintiff has been denied the full use and enjoyment of the Premises and

1 suffered and continues to suffer considerable mental anguish, fear, anxiety and pain and has therefore  
2 been damaged in an amount to be determined at trial and trebled according to statute.

3 51. In doing the acts alleged herein, Defendants have acted with oppression, fraud and malice;  
4 therefore Plaintiff is entitled to punitive damages in an amount to be determined at trial.

5 52. Pursuant to Rent Ordinance section 37.10B(c)(5), Plaintiff is entitled to recover reasonable  
6 attorney fees incurred in the prosecution of this action.

7  
8 **SECOND CAUSE OF ACTION**  
**(Violation of Unruh Civil Rights Act:**  
**Discrimination Based on Disability)**

9 53. Plaintiff repeats and re-alleges all of the previous allegations herein by reference.

10 54. The actions and conduct of the Defendants constitute discrimination in violation of the Unruh  
11 Civil Rights Act ("Unruh"), Civil Code §51 *et seq.* in that the unlawfully discriminated against Plaintiff,  
12 by harassing and trying to oust him from his unit on the basis of disability, by depriving him of sleep and  
13 security and the quiet enjoyment of the Premises.

14 55. As a proximate cause of Defendants conduct, Plaintiff suffered and continue to suffer actual  
15 damages and general damages in the form of pain and suffering, physical injury, emotional distress,  
16 humiliation and embarrassment in an amount according to proof.

17 56. As a direct and proximate result of Defendants' conduct, Plaintiff is also entitled to attorney fees  
18 as a matter of law under Unruh, Civil Code §52(a), in addition to treble damages, interest, expenses and  
19 costs of suit.

20  
21 **THIRD CAUSE OF ACTION**  
**(Breach of the Implied Warranty of Habitability against all Defendants)**

22 57. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

23 58. At all relevant times herein, numerous defective living conditions have existed, and continue to  
24 exist throughout Plaintiff's tenancy at the Premises and Property. These defective conditions include, but  
25 are not limited to:

- 26 a. Poor maintenance of the Property resulting in rodent harborage;

- b. Entry of rodents into the Property;
- c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;
- d. Inadequate performance of necessary maintenance and/or rehabilitation;
- e. Extreme excessive noise such as THC clients beating on walls and doors
- f. Inadequate protection from THC clients' dangerous behavior;
- g. Inadequate protection from fire hazards, including but not limited to nonfunctioning fire alarms and lack of emergency egress;
- h. Lack of smoke and carbon monoxide detectors;
- i. Defective and inadequate plumbing;
- j. Cracked and peeling exterior and interior paint;
- k. Water intrusion;
- l. Biological contamination;
- m. Defective windows and doors;
- n. Cockroach infestations;
- o. Bedbug infestations;
- p. Non-functioning elevator/lack of elevator service;
- q. Inadequate flooring;
- r. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- s. Complete failure to enforce Covid health and safety regulations amongst THC's clients, such as wearing masks in the common areas;
- t. Failure to supervise THC clients and enforce building rules, resulting in Plaintiff's exposure to dangerous situations such as theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, fires, non-residents gaining access to the Property at night because THC employees *prop the door open for them*, and tenants left deceased in their rooms for days at a time.

59. The defective conditions stated above constitute violations of state and local housing laws and pose severe health, safety, electrical, and fire hazards. The defective conditions materially affected

1 Plaintiff's living conditions. State and local agencies, including but not limited to the San Francisco  
2 Fire Department, have cited the Defendants for unsafe conditions and violations of state and local law  
3 as described above.

4 60. Defendants had actual and constructive notice of each of the defective conditions described  
5 above at all relevant times herein. Despite such notice, Defendants failed to take the steps necessary to  
6 repair said conditions at all times relevant herein.

7 61. Plaintiff did nothing to cause, create or contribute to the existence of the defective conditions  
8 stated above.

9 62. By Defendants' breach of the warranty of habitability, Defendants breached a duty imposed on  
10 all residential landlords by state and local law. In failing to repair the defective conditions detailed  
11 above, Defendants acted unreasonably.

12 63. As a direct and proximate result of Defendants' breach, the Plaintiff has suffered, and  
13 continues to suffer pain, anxiety, annoyance, inconvenience, distress, economic loss, loss of use and  
14 property damage, all to his detriment in amounts to be determined at trial.

15 64. The conduct of Defendants' alleged above was deliberate, willful and malicious. Defendants  
16 acted, or failed to act, deliberately and in conscious disregard of the rights and safety of the Plaintiff.  
17 By reason thereof, Plaintiff is entitled to punitive damages in an amount to be determined at trial.

18 **FOURTH CAUSE OF ACTION**  
**(Breach of Statutory Warranty of Habitability against all Defendants)**

19 65. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

20 66. Defendants have violated statutes, including, among others, Civil Code Section 1941, *et seq.*,  
21 and Health & Safety Code section 17920.3 related to the implied warranty of habitability.

22 67. Plaintiff repeatedly notified Defendants, both orally and in writing, of these unsanitary,  
23 unhealthy, and defective conditions. Defendants failed and/or refused to repair these dangerous and  
24 defective conditions within a reasonable time, or at all. Accordingly, Plaintiff is informed and believes,  
25 and thereupon allege, that Defendants had actual and/or constructive notice of each of the defective  
26

conditions described above at all relevant times herein. Despite such notice, Defendants failed to take the steps necessary to repair said conditions at all times relevant herein.

68. Plaintiffs did nothing to cause, create or contribute to the existence of the defective conditions stated above. Further, the Property as it exists in its defective and dangerous condition has no rental value whatsoever as a result of its defective and dangerous condition.

69. As a direct and proximate result of Defendants' breach of the statutory warranty of habitability and their failure to repair the defective and dangerous conditions or have them repaired within a reasonable time or at all, Plaintiff has suffered, and continue to suffer pain, anxiety, annoyance, inconvenience, distress, economic loss, loss of use and property damage, all to their detriment in amounts to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**(Nuisance against all Defendants)**

70. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

71. Plaintiff, by virtue of his rental of the Premises and his rental agreement, had at all relevant times, a property interest in the Premises. Defendants' conduct in creating and maintaining a nuisance in the manner described herein, was injurious to Plaintiff's health, offensive to Plaintiff's senses, and interfered with Plaintiff's comfortable enjoyment of life, personal property, and Plaintiff's interest in the Premises.

72. Defendants created and maintained the deficient conditions in the Property by failing to correct or repair defective conditions and failing to manage its clients or enforce the communal living rules regarding noise and building security. Defendants' conduct in maintaining the Premises and Property in a hazardous, unhealthy and offensive state was grossly negligent and Defendants should have known that regular upkeep would be required to maintain the habitability of the Premises.

73. As a direct, legal and foreseeable result of the conduct of Defendants, as set forth above, Plaintiff suffered special and general damages as set forth herein.

74. The Defendants' conduct, as set forth herein, was grossly negligent and through reasonable and necessary inspections it would have been readily apparent that the injury, discomfort, and annoyance



1 would unavoidably result to Plaintiff. Defendants therefore acted with willful and conscious disregard  
2 for the rights and safety of Plaintiff. Defendants' conduct was also oppressive and despicable, and said  
3 conduct constituted a cruel and unjust hardship upon Plaintiff. Therefore, Plaintiff requests substantial  
4 punitive damages to be proven at trial.

5  
6 **SIXTH CAUSE OF ACTION**  
**(Breach of Covenant of Quiet Enjoyment against all Defendants)**

7 75. Plaintiff re-alleges and incorporates herein all prior allegations as though fully set forth herein.

8 76. By the acts and omissions described above, Defendants interfered with, interrupted, and  
9 deprived Plaintiff of the full and beneficial use of the Premises and disturbed Plaintiff's peaceful  
10 possession of the Premises.

11 77. These acts of interference, interruption, deprivation, and disturbance by Defendants amount to a  
12 breach of the covenant of quiet enjoyment implied in all rental agreements, and codified in California  
13 Civil Code section 1927.

14 78. As a direct and proximate result thereof, Plaintiff has suffered, and continue to suffer pain,  
15 discomfort, annoyance, inconvenience, anxiety, economic loss, loss of use, and mental anguish, all to  
16 his detriment in amounts to be determined at trial.

17 **SEVENTH CAUSE OF ACTION**  
18 **(Negligence as to all Defendants)**

19 79. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

20 80. By reason of the landlord-tenant relationship between Defendants and Plaintiff, Defendants, and  
21 their agents, owed Plaintiff a duty to exercise reasonable care in the ownership, management, inspection,  
22 and control of the Property, which included a statutory duty to comply with all applicable laws governing  
23 Plaintiff's rights as a tenant and all duties listed below. Defendants also owed a duty to exercise  
24 reasonable care in maintaining the Property and Premises free of defects and/or hazards and in inspecting  
25 the Property and Premises for same, so as to preclude any person, including Plaintiff, from unreasonable  
26 risk of harm. Defendants also owed a duty to warn Plaintiff of any potential and non-obvious hazards.

1 81. The duty to exercise reasonable care owed by Defendants, and each of them, to Plaintiff also  
2 included, but was not limited to the following duties: the duty to provide Plaintiff with legal, tenantable  
3 housing, fit for human occupancy; the duty to refrain from interfering with Plaintiff's full use and quiet  
4 enjoyment of the rented residence; and the duty to comply with all applicable state and local laws  
5 governing Plaintiff's rights as tenants.

6 82. Defendants, by the acts and omissions alleged herein, were negligent and careless and thereby  
7 breached said duties. Defendants also breached their duties to Plaintiff by failing to inspect the Property  
8 and Premises, to repair the Property and Premises properly, to maintain the Property and Premises free of  
9 defects, hazards, and unsanitary conditions.

10 83. As a direct and proximate result of these breaches of duty by Defendants, Plaintiff suffered actual  
11 and special damages as herein alleged.

12 84. As a direct and proximate result of these breaches of duty by Defendants, Plaintiff suffered  
13 personal injury, including exposure to nuisance THC clients and exposure to toxic fumes created by THC  
14 clients.

15 85. The aforementioned duties breached by Defendants were breached with knowing and/or reckless  
16 disregard for Plaintiff's rights and/or safety and/or health and therefore justify an award of substantial  
17 exemplary and punitive damages in an amount to be proven at trial.

18 **EIGHTH CAUSE OF ACTION**  
**(Negligent Violation of Statutory Duty all Defendants)**

19 86. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

20 87. Defendants violated their duty of due care to Plaintiff and violated their statutory duties to  
21 Plaintiff by violating certain housing, building and fire codes, local ordinances and state statutes,  
22 including but not limited to: Civil Code Section 1941, *et seq.*, and Health & Safety Code section 17920.3,  
23 17975, *et seq.*

24 88. At all times relevant, Plaintiff belonged to the class of persons for which these statutes were  
25 designed to offer protection. The harm that has befallen Plaintiff is of the type these statutes were  
26 designed to prevent.

89. As a proximate result of Defendants' negligent violation of statutory duty, as set forth above, Plaintiff has suffered actual, special and general damages as set forth herein.

**NINTH CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress as against all Defendants)**

90. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

91. The acts of Defendants, as heretofore alleged were extreme and outrageous and done with conscious disregard for the rights of Plaintiff. Defendants knew that Plaintiff was susceptible to additional discomfort as a result of the conduct described, knew that the conduct adversely affected, had the wherewithal to avoid the conduct, yet consciously failed and refused to do so.

92. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continue to suffer severe mental and emotional distress, pain, and suffering, all to Plaintiff's general and punitive damage, in an amount to be proven at trial.

**TENTH CAUSE OF ACTION**  
**(Breach of Contract against 439 O'Farrell Street, LLC)**

93. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

94. Defendant 439 O'Farrell Street, LLC failed to perform the terms and conditions of each respective agreement by which they are bound. Defendants breached the agreement with Plaintiff by, among other things, failing to provide a habitable and safe living environment; failing to maintain and repair the Premises and Property; improperly repairing the Premises; preventing quiet enjoyment by Plaintiff of the Premises; wrongfully demanding and collecting rent notwithstanding uninhabitable conditions; and breaching the implied warranty of habitability and covenant of quiet enjoyment.

95. Plaintiff performed all duties, conditions and obligations that were required of them pursuant to the terms of the rental agreement. The breaches of the rental agreement by Defendant herein alleged are the direct and proximate cause of damages to Plaintiff as described herein. Plaintiff is also entitled to reasonable attorneys fees and costs pursuant to Civil Code Sections 3304.

**ELEVENTH CAUSE OF ACTION**  
**(Premises Liability against all Defendants)**

152. Plaintiff re-allege and incorporate all prior allegations as though fully set forth herein.

153. At all times relevant to this cause of action, Defendant and their agents owned, leased, occupied, managed, or otherwise controlled the Property.

154. As landowners and managers of the Property, Defendants owed a duty of care under common law and Civil Code section 1714 to exercise due care in the management of the Property so as to avoid foreseeable injury to others. This duty required Defendants to comply with all building, fire, health and safety codes, ordinances, regulations, and other laws applying to the maintenance and operation of rental housing. Defendants allowed tenants who had committed arson, assault, or battery multiple times to remain tenants at the Property without regard for the safety and well-being of Plaintiff.

155. Additionally, as owners, managers, and lessors of the Property, Defendants and their agents had a duty under Civil Code section 1941 to maintain the Property in a condition fit for human occupation and to repair all subsequent dilapidations thereof that rendered the Property untenable.

156. Defendants breached these common law and statutory duties by failing to correct substandard conditions and maintain the Property in a sanitary condition. Defendants knew, or reasonably should have known, that Plaintiff would be injured as a result of their breach of the common law and statutory duties of care.

157. As a direct and proximate result of Defendants' negligent maintenance of the Premises, the value of the leasehold held by Plaintiff was diminished. Consequently, Plaintiff was damaged in an amount equal to the rental payments due and paid during Plaintiff's leasehold, or in an amount to be proven at trial.

158. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and/or continues to suffer mental stress, emotional distress, anxiety, annoyance, and discomfort, and property damage, in an amount to be proven at trial, but which amount is within the jurisdictional requirements of this Court.

159. Defendants' conduct in failing and refusing to maintain the property and supervise and support its clients has been despicable, malicious, willful, knowing, cruel, unjust and oppressive, thereby entitling Plaintiff to punitive damages in an amount to be proven at trial.

**TWELFTH CAUSE OF ACTION**  
**(Unlawful Business Practices Against THC)**

160. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

96. Plaintiff, in bringing this action, is suing as an individual but seeks injunctive relief on behalf of the public at large.

97. By failing to comply with city, state and common law obligations relating to lessors of residential premises, (including Civil Code Section 1941, *et seq.*, and Health & Safety Code section 17920.3, 17975, *et seq.*); failing to make thorough and timely repairs; and failing to maintain bathrooms, garbage and common areas in a sanitary condition as alleged herein, and failing to enforce building rules and insure the safety of Plaintiff by continuously exposing him to THC clients who had committed assault, battery, vandalism, extreme and lengthy noise disturbances and arson at the Property, Defendants have acted in contradiction to the law and are engaged in unfair and unlawful business practices.

98. Plaintiff is informed and believe and thereupon allege that the acts of Defendants as described herein, constitute an unlawful and unfair business practice and unfair competition in violation of California Business and Professions Code, Sections 17200 *et seq.*

99. Plaintiff is informed and believe and thereupon allege that Defendants, as a pattern and practice engage in such unlawful business practice as aforementioned, directly having effect upon other members of the public to whom Defendants have legal obligations.

100. Defendants, as a pattern and practice, perform substandard maintenance at the Property. to cover up habitability defects. Defendants, as a pattern and practice, do not provide the supportive services to their clients that they are paid to implement by various governmental entities.

101. Plaintiff is informed and believes and thereupon alleges that Defendants have been unjustly enriched by their violations of their legal obligations as landlords and lessors of residential property and related provisions of the Business and Professions Code, which thereby justifies the award of restitution in an amount to be proven at trial, including but not limited to attorney fees and injunctive

1 relief, enjoining Defendants from managing the Property and/or future unlawful or unfair business  
2 practices.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Violation of Cal. Gov. Code §12927(c)(1):**

5 **Failure to Provide Reasonable Accommodations against Defendant THC)**

6 102. Plaintiff repeats and re-alleges all of the previous allegations herein by reference.

7 103. The Fair Employment and Housing Act ("FEHA") offers protection to tenants against the  
8 unlawful practices of landlords by broadly prohibiting housing discrimination in the seeking, obtaining  
9 and holding of housing based on sexual orientation and religion.

10 104. As set forth above, Defendants failed to make reasonable accommodations in housing rules,  
11 policies, practices, or services where necessary to afford Plaintiff equal opportunity to use and enjoy a  
12 dwelling. Cal. Gov. Code §12927(c)(1). THC refused to accommodate Plaintiff's insomnia by ceasing  
13 morning "wellness checks" when Plaintiff had not slept often due to THC's nuisance client living  
14 underneath him. THC refused to accommodate Plaintiff's insomnia and osteoarthritis by moving the  
15 nuisance tenant in room 417 (who has repeatedly bullied and harassed Plaintiff and other non-THC  
16 clients in rooms 421 and 410) to a different unit. THC refused to accommodate Plaintiff's insomnia by  
17 refusing to move the extremely loud and out of control THC client housed in room 308, directly under  
18 the Premises.

19 105. By harassing Plaintiff based upon Plaintiff's disability, Defendant THC violated FEHA.

20 106. Plaintiff suffered damages arising out of this cause of action in an amount to be proved at trial.

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1           **WHEREFORE**, Plaintiff prays for judgment as follows:

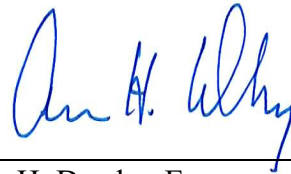
- 2                   1. For general damages according to proof;  
3                   2. For special damages according to proof;  
4                   3. For punitive damages allowed by law;  
5                   4. For restitution according to proof;  
6                   5. For attorney's fees allowed by law;  
7                   6. For the costs of suit;  
8                   7. For injunctive relief enjoining Defendant THC from managing the Property and/or  
9                   committing future unlawful or unfair business practices; and  
10                  8. For such other and further relief as the Court deems just and proper.

11       Respectfully submitted,

12       Dated: January 8, 2021

AARON DARSKY, ESQ.

13       By:



14                   \_\_\_\_\_  
15                   Aaron H. Darsky, Esq.

16                   Attorney for Plaintiff Anthony Thorp